IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11943 of 2000

with

SPECIAL CIVIL APPLICATION No 761 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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PARESH KALIDAS DAVE

Versus

DR JIVRAJ MEHTA MEMORIAL TRUST

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Appearance:

MR PUSHPADATTA VYAS for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR DP JOSHI, AGP for Respondent No. 2

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CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 28/12/2001

COMMON ORAL JUDGEMENT

Rule. The learned AGP waives service of Rule.

2. Heard the learned counsel Mr.Pushpadatta Vyas and the learned AGP Mr.D.P.Joshi.

3. The Dy. Director of Public Health Department, Mr.B.M.Soni is present in the Court and makes a statement that in terms of the award of the Labour Court and in compliance with the direction of this Court dated 26.09.2001, the workman Mr.P.K.Dave shall be reinstated within one month, i.e. on or before 31st January, 2002. The earlier order dated 26.09.2001 (Coram : K.M.Mehta, J) containing the direction to reinstate also stipulated that the question of backwages would be decided at the time of final hearing.

4. There was a consensus that the workman Mr.P.K.Dave was not insisting upon the benefit of backwages as awarded in the impugned award or for the period subsequent to the date of the award. Therefore, by consent the part of the award by which backwages are awarded by the Labour Court is required to be set aside and the Spl.C.A. No.761 of 2001 has to be allowed to that extent. As for the other ground that the original appointment of the workman by respondent No.1 was illegal, it was conceded that he could, at any time, be discharged in accordance with law.

5. In view of the above consensus Spl.C.A. No.11943 of 2000 is not pressed for any other prayer and hence stands disposed as having become infructuous. Spl.C.A. No.761 of 2001 is partly allowed and the impugned award is set aside to the extent of the award of backwages. Rest of the award shall be implemented before 31st January, 2002.

Rule is made absolute accordingly with no order as to costs.

6. It was noticed that Mr.H.N.Sompura, ld. advocate appeared as A.G.P. and advocate for the petitioner-State in Spl.C.A.No.761 of 2001 wherein Jivaraj Mehta Memorial Trust was respondent No.2 and also appeared for both these parties who were respondents in Spl.C.A. No.11943 of 2000 arising from the same award. A copy of this order is, therefore, directed to be served upon the Bar Council of Gujarat for information and necessary action.

Sd/-

(D.H.Waghela, J)

'Bhavesh'